

DD7 McCann Exh 4

THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE NATIONAL PRESCRIPTION)
OPIATE LITIGATION,)
)MDL No. 2804
County of Lake, Ohio v)
Purdue Pharma L.P., et al.,)Case No. 1:17-md-2804
Case No. 18-op-45032)
)Judge Dan Aaron
County of Trumbull, Ohio v.)Polster
Purdue Pharma, L.P., et al.,)
Case No. 18-op-47079)
)
Track 3 Cases)

The videotaped videoconference deposition
of CRAIG J. McCANN, Ph.D., called for examination
pursuant to the Rules of Civil Procedure for the
United States District Courts pertaining to the
taking of depositions, taken in McLean, Virginia,
on the 11th day of June, 2021, at the hour of
8:05 a.m.

Reported by: Gina M. Luordo, CSR, RPR, CRR
License No.: 084-004143
APPEARING REMOTELY FROM COOK COUNTY, ILLINOIS

1 THE WITNESS: Yes.

2 BY MS. SWIFT:

3 Q. Dr. McCann, do you see that Exhibit 8
4 includes 27 red flag criteria?

5 A. Yes.

6 Q. Have you seen this document before?

7 A. I don't believe so, not in this form
8 anyway.

9 Q. Do you have any idea where these 27 red
10 flags came from?

11 A. Well, generally in my initial expert
12 report, there's a footnote that just gives my
13 general understanding.

14 Q. And we'll get to your April report in a
15 little bit, but focusing on these 27 red flags that
16 the plaintiffs disclosed to us in June of 2020, do
17 you know who put those red flag criteria together?

18 A. No, not in any complete sense.

19 Q. Do you know in an incomplete sense?

20 A. Well, they were provided to my office --
21 to my office by counsel. So how they assembled
22 those 27 from different sources, I don't know.
23 Ultimately, I attribute the 27 methods to counsel
24 who provided them to me.

25 Q. Do you know whether plaintiffs' lawyers

1 drafted these 27 red flag criteria?

2 A. I don't know who all contributed to the
3 drafting, but clearly counsel would have
4 contributed to the drafting. After all, it's an
5 exhibit to their brief or their response.

6 Q. Who among the plaintiffs' lawyers provided
7 you with these 27 red flag criteria?

8 A. I don't know. I would have to go back and
9 check the correspondence.

10 Q. Do you know whether these 27 red flag
11 criteria that are marked as Exhibit 8 were drafted
12 by another hired consultant who is working for the
13 plaintiffs' lawyers?

14 A. I don't know.

15 Q. Do you know whether someone with expertise
16 in pharmacy practice put together these 27 red flag
17 criteria?

18 A. I don't know.

19 Q. Have you ever talked to the plaintiffs'
20 pharmacy consultant, Carmen Catizone, about these
21 27 red flag criteria?

22 A. Not in any detail. There was some
23 discussion of these, perhaps, in one or two or
24 three calls with Mr. Catizone -- not one or two or
25 three. Three or four calls over the last year with

1 Mr. Catizone. I don't recall whether -- I don't
2 recall to what extent these 27 were discussed, but
3 the discussion was primarily on the first 16 that
4 are in my report.

5 Q. And we'll get to this in more detail, but
6 just to try to make sure we're on the same page,
7 your April 16 report lists 43 red flags, correct?

8 A. Correct.

9 Q. The first 16 red flags are the ones that
10 came from Mr. Catizone; is that right?

11 A. That's my understanding. We also got them
12 from counsel, but my understanding is they came
13 ultimately from Mr. Catizone.

14 Q. And we can go one by one and compare them
15 if you'd like, but do you know sitting here without
16 doing that that Flags 17 through 43 in your report
17 are the same as the 27 red flags we're looking at
18 right now?

19 A. I don't know with certainty because I
20 haven't seen Exhibit 8 before, but they very likely
21 are.

22 Q. You said you think you talked to
23 Mr. Catizone a little bit, but not in detail about
24 these 27 flags.

25 What specifically did you discuss with him

1 about the 27?

2 A. I don't know whether we did or not. We
3 may have had some fleeting discussion of the 27.
4 As I said, the discussion that I recall was really
5 about the first 16.

6 Q. Did you ever discuss with Mr. Catizone the
7 27 red flag criteria reflected in Exhibit 8 before
8 June 19th of 2020?

9 A. I'm sorry. I missed a little part of
10 that. Can you ask that again?

11 Q. Sure. Did you ever discuss with
12 Mr. Catizone the 27 red flag criteria that are
13 reflected in Exhibit 8 before June 19, 2020?

14 A. Almost definitely not, but I can't be
15 100 percent sure, but almost certainly not.

16 Q. Have you ever talked to any other hired
17 consultant working for the plaintiffs' lawyers
18 about the 27 red flag criteria?

19 A. I don't think so, not that I recall and
20 certainly not in any substantive way.

21 Q. Now I'd like you to open what's WAG 11 in
22 your box and will be Exhibit 9.

23 (Whereupon, McCANN Deposition
24 Exhibit No. 9 was marked for
25 identification.)

1 BY MS. SWIFT:

2 Q. This is the Exhibit B that was referenced
3 in the plaintiffs' discovery responses that we
4 looked at a few minutes ago that talked about the
5 25 percent of prescriptions being flagged.

6 Do you recognize it?

7 A. No.

8 Q. Do you know whether this document reflects
9 your work or the work of your firm?

10 A. Well, I believe it reflects our work.

11 Q. Why do you believe it reflects your work?

12 A. Well, because in the past, I have seen
13 Excel files or PDF printouts that included what you
14 have in Column 1 here, the Red Flag Method
15 identified as Red Flag 1 through Red Flag 27. And
16 I've seen the number of flagged prescriptions and
17 the percentages. So I've seen data that looks like
18 this.

19 As I said, I haven't seen this particular
20 document or this format, but I've seen work like
21 this. And it's actually a lot of work to get to
22 here. So I don't think someone else did it. I
23 think we probably created the numbers that go into
24 this particular exhibit.

25 Q. There are numbers of flagged prescriptions

1 little bit more information. I didn't pause on
2 every one that we've gone through, but 41, you can
3 see it says that the two prescriptions were
4 dispensed to a patient within a single day on two
5 different days. I guess that is the same as 25. I
6 had to pause on that for a second, but yes, I
7 believe they're the same.

8 Q. Do you know why there are differences in
9 the wording of some of these?

10 A. Well, because the response was written by
11 lawyers, and my expert report was written by me and
12 my staff. And as we were writing up how the code
13 is implemented, there might be some slight detail
14 that needed to be said a little more precisely or
15 said differently, or in any case, we used slightly
16 different language. I think it just reflects that
17 one set of people wrote the interrogatory answers
18 trying to explain these 27 flags, and my staff and
19 I were trying to explain the same flags and wrote
20 those explanations in our words.

21 Q. Do you know whether anyone with pharmacy
22 expertise reviewed either the 27 red flags
23 reflected in Exhibit 8 or the same ones we've been
24 going through in your report to confirm that they
25 were, in fact, the same and would flag the same

1 prescriptions?

2 A. Well, I don't see what expertise that
3 person would have to make that judgment. I think
4 that's a different issue, but in any case, I don't
5 know who reviewed or had input into the Exhibit A
6 that we're looking at or who, for that matter,
7 reviewed our descriptions.

8 Q. Is No. 42 in your April 2021 report the
9 same as No. 26 in Exhibit 8?

10 A. Yes.

11 Q. Is No. 43 the same as No. 27?

12 A. Yes.

13 Q. The red flags 17 through 43 in your April
14 2021 report are the same as the 27 red flags
15 described in the June 2020 interrogatory responses
16 and attached to those responses as Exhibit A,
17 correct?

18 A. Correct.

19 Q. The slight wording variations that you
20 identified as we went through those, is it your
21 understanding that those didn't have any effect on
22 the numbers of prescriptions that would be flagged
23 by any of those 27 flags?

24 A. Correct. There is -- in some of the early
25 ones we looked at, there was a little bit of

1 ambiguity over whether the window, the 20-day
2 window or 45-day window or 60-day window, referred
3 to the fill dates or the written dates. There's
4 just a little bit of ambiguity there. I think our
5 description is clear what we are referring to.

6 And so with that possible quibble to use
7 your term from earlier, they should result -- they
8 should -- if you implement my 17 through 43 or
9 Exhibit 8, 1 through 27, you should get the same
10 results implementing it on the same data.

11 Q. Do you know, sitting here today, whether
12 that ambiguity that you just referenced makes a
13 difference in the number of flagged prescriptions?

14 A. Well, it will make a difference if you use
15 fill dates rather than dispense dates. I'm sorry.
16 Fill dates rather than written dates.

17 Q. Do you know whether the original 27 flags
18 that were identified in June 2020, whether the
19 analysis using those flags used a different date
20 than you did in your April 2021 report?

21 A. No. I'm just sitting here with you
22 comparing the descriptions in these two documents.

23 Q. You can't identify anyone with pharmacy
24 expertise who provided the plaintiffs' lawyers with
25 these 27 red flags that we just walked through,

1 A. Yes.

2 Q. And do you see where it says at the top of
3 245 flagged for any reason, and it reflects
4 2.4 million prescriptions?

5 A. Correct.

6 Q. 53.6 percent of the total prescriptions
7 produced in the case?

8 A. Correct.

9 Q. That's a different number of prescriptions
10 than were disclosed in June of 2020, correct?

11 A. Correct.

12 Q. In the May report, the combination red
13 flags identify 884,000 prescriptions, correct?

14 A. Correct.

15 Q. Would you agree with me, and we can do the
16 math, that that represents about 19 percent of the
17 total prescriptions in the case, which are also
18 reflected in Appendix 12 that we were just looking
19 at? Do you need me to point -- it's Page 245 of
20 Appendix 12 again shows that the total number of
21 prescriptions produced in the case is about
22 4.5 million.

23 A. Yes. Thank you.

24 Q. Would you agree with me that 884,000 is
25 about 19 percent of 4.6 million?

1 A. Yes.

2 Q. Is it your opinion that 19 percent of the
3 prescriptions produced in this case should not have
4 been filled?

5 A. No.

6 Q. You didn't do anything to try to determine
7 whether any of those prescriptions were improperly
8 filled. Is that a fair statement?

9 A. Correct. Yes.

10 Q. You don't have any idea whether any
11 prescription produced in this case was improperly
12 filled, correct?

13 A. Correct.

14 Q. You didn't do anything to try to determine
15 whether any prescription produced in this case was
16 illegitimate, meaning not written for a legitimate
17 medical purpose?

18 A. Correct.

19 Q. You have no idea whether any prescription
20 produced in this case was illegitimate?

21 A. Correct.

22 Q. And it's certainly not your opinion that
23 884,000 prescriptions in Lake and Trumbull County
24 were diverted, correct, sir?

25 A. Correct.

1 Q. Would you agree that it would be a
2 caricature to say that those 884,000 prescriptions
3 were diverted?

4 A. I don't know if I would say it was a
5 caricature, but I don't know of any basis for
6 saying that. I wouldn't say it.

7 Q. You did not look to see whether any
8 prescription produced by the pharmacies in this
9 case was diverted?

10 A. Correct.

11 Q. You have not seen any evidence of
12 illegitimate prescriptions filled by any of the
13 pharmacies in this case in the course of your work?

14 A. Correct.

15 Q. You also haven't seen any evidence that
16 any prescription filled by any of the pharmacies in
17 this case was diverted, correct?

18 A. Correct.

19 Q. Your work identifying red flagged
20 prescriptions did not involve figuring out whether
21 any prescriptions were illegitimate or diverted,
22 correct?

23 A. Correct.

24 Q. You have no opinion in this case that any
25 prescriptions were diverted, fair?

1 A. Correct.

2 Q. Your combination red flags as described in
3 the May 19th report flagged 19 percent of the
4 prescriptions produced in the case. Yet, in your
5 distribution analysis that we talked about first
6 thing this morning, we talked about the fact that
7 for some methods, you flagged 100 percent of
8 orders, correct?

9 A. There's a great big disconnect between
10 those two, but I think the two factual statements
11 are correct.

12 Q. So long as those flagged orders went to
13 fill legitimate prescriptions, could you agree that
14 there is no resulting harm from the fact that the
15 order was flagged?

16 A. No, that definitely would be untrue.

17 Q. Why?

18 A. Well, my understanding, and it's just a
19 layman's understanding having worked in the ARCOS
20 data and this litigation now for three plus years,
21 is that any sort of flagging method that would have
22 been implemented, including these six or seven
23 illustrations, identify shipments or, perhaps,
24 prescriptions in this context as well that ought to
25 have been subject to some due diligence before the

1 order was shipped or the prescription was filled.

2 That doesn't mean that every order that
3 would trigger such a flag or every prescription
4 that would trigger such a flag would, if shipped or
5 filled, with certainty have been diverted. It's
6 only that a system that effectively surveilled
7 orders and prescriptions being filled would have
8 been useful in stopping orders to problematic
9 pharmacies or stopped pharmacies from filling
10 prescriptions written by bad doctors or submitted
11 by bad patients. The fact that the particular
12 order that is flagged by one of these methods
13 didn't result itself in a bad prescription and a
14 drug being diverted doesn't mean that there was no
15 harm by virtue of these sorts of systems not being
16 in place and extensive due diligence being done on
17 orders or on prescriptions.

18 So I think what you said is exactly wrong,
19 although, I'm not a subject matter expert, and I
20 haven't offered any opinions along the lines of the
21 question you just asked me.

22 Q. Well, I appreciate that. I understand
23 you're not the one who is going to offer an opinion
24 about the actual harm that the plaintiffs claim to
25 have suffered; is that fair?

1 doctors and patients with Mr. Catizone?

2 A. No.

3 Q. Did you ever talk about this section of
4 your May 19th report on unique doctors and patients
5 with any other hired consultants for the
6 plaintiffs?

7 A. No.

8 Q. This section of your May 19th report on
9 doctors and patients identifies more than 4 million
10 prescriptions written by the doctors who wrote
11 prescriptions identified by your red flag -- strike
12 that.

13 This section of your May 19th supplemental
14 report identifies more than 4 million prescriptions
15 written by the doctors who wrote prescriptions
16 identified in the combination red flags, correct?

17 A. Yes.

18 Q. It also identifies hundreds of thousands
19 of prescriptions filled by patients who initially
20 filled prescriptions identified by your combination
21 red flags, correct?

22 A. Correct.

23 Q. Would you agree with me that this section
24 of your May 19th report identifies more than
25 90 percent of all the prescriptions produced in the

1 case?

2 A. Yes.

3 Q. You don't have any opinion that any of
4 those prescriptions should not have been filled,
5 correct?

6 A. Correct.

7 Q. No opinion that any of them are
8 illegitimate?

9 A. Correct.

10 Q. No opinion that any of them were diverted?

11 A. Correct.

12 Q. You have no opinion that there was
13 anything at all wrong with those prescriptions?

14 A. Correct.

15 Q. Did you look at any of the individual
16 prescriptions written by the doctors that are
17 reflected at very high level in this section of
18 your report?

19 A. No.

20 Q. Did you look at any of the individual
21 prescriptions filled by these patients?

22 A. I'm sorry. I may have read more into your
23 prior question than you intended. I reviewed the
24 dispensed prescription data. So in that sense, I
25 reviewed prescriptions written by at least some

1 prescribers and filled by at least some --
2 submitted by some patients and filled by some
3 pharmacies.

4 I thought in the prior question, you were
5 asking me whether I reviewed a physical
6 prescription written by a doctor like my doctor
7 might write out a prescription for me, and I said
8 that I did not do that. If what you meant by the
9 prior question was did I look at any individual
10 record in the data, the answer is yes. So that
11 answer would be yes also to this most recent
12 question.

13 Q. Beyond coming up with the numbers that are
14 reflected in your May 19th report, did you perform
15 any analysis on individual doctors?

16 A. Not that I recall.

17 Q. What about individual patients?

18 A. Again, not that I recall. I looked at the
19 data and sorted it as I was reviewing the data to
20 see how it looked when you grouped by patient or by
21 prescriber, but that didn't rise to the level of
22 some analysis of the prescriptions written by any
23 prescriber or filled by any patient.

24 Q. All right. Turn back, if you would,
25 please, to the excerpt of Appendix 12, and take a

1 Walmart's market share of the total opioids
2 distributed into Trumbull County by MME is
3 1.93 percent, correct?

4 A. Correct. I'm sorry. Before we leave this
5 one, this is the ARCOS data, and this is Trumbull
6 County. So this doesn't include a Walmart pharmacy
7 that's in Trumbull County. So that number would
8 change very slightly if we include that pharmacy
9 that ARCOS describes as being in Mahoning County, I
10 think, but it will still be a small number like
11 1.93 percent. It will just be a little bit bigger.

12 Q. All right. I was going to circle back to
13 this in a minute, but you're there now. So let's
14 talk about this additional pharmacy that you found.

15 So is that something then that's missing
16 from all of your reports other than Supplemental
17 Appendix 8A?

18 A. It's not so much missing. We report these
19 statistics based on what's in the ARCOS data, and
20 that would include the pharmacies that are
21 identified in the ARCOS data in Trumbull County.
22 So I'm not saying I want to change this exhibit to
23 reflect that additional pharmacy, but I mentioned
24 that pharmacy a couple of times. So I'm just
25 pointing out where it might have an impact if you

1 were to include it. We only include it for
2 purposes of the SOMS analysis that gets reported in
3 the Supplemental 8A.

4 Q. Okay. So you're a numbers guy, right?

5 A. Yes.

6 Q. I'm not trying to be cute, but you are
7 here to sort of crunch the numbers. You've
8 referred to yourself as sort of a human calculator,
9 I think, before, correct?

10 A. Yes.

11 Q. So what I'm trying to understand is for my
12 client, what numbers to rely on or what numbers
13 you're intending to give opinions on. So can we
14 then understand and rely that the opinions that
15 you're going to be offering at trial are going to
16 relate to the three reports that you submitted in
17 Track 3 understanding that Supplemental Appendix 8A
18 replaces Supplemental -- I'm sorry, replaces
19 Original Appendix 8C, and then we can otherwise say
20 this is what Dr. McCann is going to testify about
21 with respect to Walmart coming into trial?

22 A. Yes, I would think so other than the
23 development of some demonstratives or some summary
24 exhibits of the underlying data that would come in
25 as evidence. I'm not withholding anything from

1 you. I've given you all of the analysis that we've
2 done in these three reports, and I've explained the
3 difference between the first report and the
4 supplemental report and this issue about the
5 pharmacy that is in Trumbull County that isn't
6 identified as such in ARCOS. I'm likely to give
7 some, you know, explanation of that if I'm asked at
8 trial.

9 Q. So -- but as far as your opinions and
10 however you decide to treat this one particular
11 pharmacy, as your reports currently stand, with the
12 exception of replacing 8C with Supplemental 8A,
13 that's how you plan to describe your treatment of
14 the Walmart pharmacies in Lake and Trumbull County,
15 correct?

16 A. Yes, subject to the explanation I gave you
17 a minute ago. There might be demonstratives that
18 are some distillation, some simplification of these
19 exhibits or tables and maybe some what I understand
20 to be referred to as 1006 exhibits that might be
21 summaries of the data that would be entered as
22 evidence.

23 Q. Well, actually, let me go to my next set
24 of questions, and it might clear this up a little
25 bit more.